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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

RALPH ALMAGUER et al.,

Plaintiffs and Appellants,

v.

NEWLAND ENTITIES, INC. et al.,

Defendants and Respondents.

C075662

(Super. Ct. No. CVCS110479)

Plaintiffs Ralph Almaguer and Matthew Amata (together, plaintiffs) sued defendants and respondents Newland Entities, Inc. (Newland), Robert H. Cervantes, Inc., (RHC, Inc.), and Robert H. Cervantes (together, defendants) for violations of state labor laws (including failure to pay ordinary wages, failure to pay overtime, failure to provide rest and meal periods, and failure to pay prevailing wages), violations of the Unfair Competition Law (UCL), wrongful termination in violation of public policy, and intentional infliction of emotional distress. The trial court granted defendants' motion for partial nonsuit on plaintiffs' cause of action for intentional infliction of emotional distress

and claim for failure to pay prevailing wages. The jury found in plaintiffs' favor on their cause of action for failure to pay ordinary wages, and defendants' favor on plaintiffs' cause of action for wrongful termination in violation of public policy and claims for failure to provide rest and meal periods and waiting time penalties. The trial court found in defendants' favor on plaintiffs' equitable cause of action for violations of the UCL.

On appeal, plaintiffs argue: (1) the trial court erred in refusing to hear their motion in limine to exclude evidence of a prior conviction suffered by Almaguer; (2) the trial court erred in granting defendants' motion for partial nonsuit on the prevailing wage claim; (3) the trial court erred in finding for defendants on the UCL cause of action; and (4) the trial court erred in awarding approximately 20 percent of the attorneys' fees they requested. Finding no error, we affirm.

I. BACKGROUND

Plaintiffs are former employees of Newland Entities, Inc. (Newland or the company), a construction company that performs concrete and underground construction work, mostly for public works projects. Cervantes is Newland's owner and sole shareholder. He is also the sole shareholder of RHC, Inc., a now defunct entity that employed Amata towards the end of the relevant period. Unless otherwise indicated, we shall refer to Newland and RHC, Inc. collectively as Newland.

Almaguer began working for Newland in February 2007. During the course of his employment, he worked as a laborer and the operator of a horizontal directional drill. Almaguer's employment was terminated on January 25, 2010, following an altercation with Newland's office manager, Jessica Malone.

Amata began working for Newland in August 2006. He was originally hired as a truck driver, but later worked as a laborer, mechanic, and heavy equipment operator. He was terminated on August 20, 2010, after Cervantes caught him padding his timecard.

Plaintiffs filed a complaint in March 2011, alleging failure to pay overtime compensation, failure to provide rest periods, failure to provide meal periods, violations

of the UCL (Bus. & Prof. Code, § 17200 et seq.), wrongful termination in violation of public policy, and intentional infliction of emotional distress. As relevant here, the complaint alleges that Newland's violations of state labor laws include "the failure to pay prevailing wage rates on prevailing wage jobs," and "the failure to pay the correct prevailing wage rate." Plaintiffs further alleged that Newland and RHC, Inc. were alter egos of Cervantes. Defendants filed an answer, denying the allegations and asserting various affirmative defenses.

Plaintiffs' legal causes of action were tried to a jury over the course of eight days in November 2013. Plaintiffs' equitable cause of action—for violations of the UCL—was tried concurrently by the trial court.

A. Motion in Limine

On the first day of trial, plaintiffs moved in limine to exclude evidence that Almaguer had suffered a conviction in Arizona for attempting to have unlawful sexual conduct with a person in custody, an undesignated felony that was subsequently designated as a misdemeanor. (A.R.S. § 13-604.) Although the trial court's pretrial order apparently directed the parties to file motions in limine on the first day of trial, the court refused to rule on plaintiffs' motion, stating, "First of all, even though the form and the—that you got in the settlement conference indicated that you were to file in limine motions, my personal opinion is that in limine motions without proper notice are a denial of due process. And I'm not ruling on any in limine motions, unless there is some stipulation, until such time during the trial if somebody makes an appropriate objection. I see no reason to force opposing counsel as well as myself to respond to motions that are filed, you know, less than a day before trial when those motions could have been filed on proper notice." When plaintiffs' counsel noted that defense counsel might raise the conviction in his opening statement, the trial court responded that the problem was "self-correcting" in that defense counsel would be placing his credibility with the jury at risk in the event the court eventually excluded the evidence.

As plaintiffs' counsel anticipated, defense counsel raised Almaguer's conviction in his opening statement. In characterizing the litigation as plaintiffs' attempt to seek revenge for the termination of their employment, defense counsel argued: "The story is going to begin and end where these two gentlemen were terminated from their employment because this is where the good feelings ended and the desire to get even began." "In essence," defense counsel continued, "what the evidence is going to show with regard to Mr. Almaguer, a good family man, who was convicted of a felony down in Arizona, for attempting to have sex with an inmate that he was in charge of—he basically worked for us and he worked as a drill operator for a number of years. And as he worked for us, he had no problems." Defense counsel went on to argue that Almaguer had been verbally abusive to Malone on the day of his termination. He opined that Almaguer had an anger problem that manifested itself in his interactions with women, which defense counsel characterized as bullying. According to defense counsel, Almaguer's tendency to bully women led to the altercation with Malone, which, in turn, led to Almaguer's termination.

On direct examination, Almaguer denied having been verbally abusive to Malone, and maintained that he was never verbally abusive towards women. As Almaguer put it, "I have three daughters and three sisters, no brothers and no sons. So[,] if anything, I have the utmost respect for women. I would never verbally abuse a female, or a male for that matter[,] for any reason whatsoever." On cross-examination, defense counsel returned to the subject of Almaguer's conviction, stating, "In Arizona you were convicted of attempting to have sex with a female inmate while you were a custodial officer." Plaintiffs' counsel objected, and a brief discussion ensued. The trial court indicated, in the presence of the jury, that the court was inclined to admit the conviction as character evidence. The trial court then adjourned for the day.

The trial court revisited the issue the next morning, out of the presence of the jury. Following further argument, the trial court indicated it was now inclined to exclude the

evidence. The jury was then seated, and the trial court sustained plaintiffs' objection on grounds of relevance and Evidence Code section 352. The trial court then gave the following curative instruction: "Now, ladies and gentlemen, we talked about this yesterday when I was talking about if I strike evidence, you're not supposed to consider it for any purpose. It's as if you had never heard of it. And I always wonder about that, but it's true. And even though you might remember it, you are to put it out of your mind if it ever comes up for any reason."

The trial court continued, "So yesterday, there was some testimony about Mr. Almaguer maybe having suffered some criminal convictions that I can't remember. But to the extent that you heard the question, you're not to consider the question as being significant for any reason[,] since the question is only significant in the extent that an answer has been given. If you heard an answer to that question, you're to disregard the answer. So the question and answer concerning any criminal matters or matter for Mr. Almaguer is not to be part of any evidence before you, and you're not to consider it for any purpose." As we shall discuss, plaintiffs contend the trial court erred, not in ruling that the evidence of Almaguer's conviction should be excluded, but in failing to so rule earlier.

B. Request for Judicial Notice

On the first day of trial, plaintiffs asked the trial court to take judicial notice of Industrial Welfare Commission Order No. 16-2001 (order) (which applies to certain on-site occupations in the construction, drilling, logging, and mining industries), and prevailing wage determinations promulgated by the Department of Industrial Relations (DIR) between 2006 and 2010. Defense counsel objected to the request on multiple grounds. As relevant here, defense counsel objected on the ground that the documents attached to the request were incomplete, and on the further ground that they were being offered for an improper purpose, in that plaintiffs proposed to testify as to what the prevailing wage rate should have been for the work they performed. According to

defense counsel, prevailing wage determinations entail numerous questions of fact and law as to which plaintiffs' proffered opinion testimony would be inappropriate. The trial court agreed that prevailing wage determinations are "complicated," and observed, "You know, this is a case that cries out for expert opinion because this appears to me to be something that's outside my ability to perceive and understand." The trial court denied the request "as presently formulated," asking, "And I mean really, [plaintiffs' counsel], how do you expect the jurors to figure this out?" Plaintiffs' counsel responded, "It's not going to be that complicated." Plaintiffs subsequently filed an amended request for judicial notice attaching complete copies of the prevailing wage determinations. The trial court granted plaintiffs' request with respect to the order, and denied the request with respect to the prevailing wage determinations. As we shall discuss, plaintiffs contend the trial court erred in refusing to take judicial notice of the prevailing wage determinations.

C. Payroll Records

Throughout the trial, witnesses referred to specific payroll records, including daily timecards, daily activity reports, and the company's certified payroll. We pause to describe these records as they are necessary to understand the relevant testimony.

As the name suggests, daily timecards are completed every day, and reflect hours worked, the name of the project, and an abbreviated job description. For example, many of Almaguer's daily timecards include the notation "HDD," which stands for "horizontal directional drill." Daily timecards are completed by workers. Daily activity reports, by contrast, are completed by a construction foreperson and contain a more detailed account of which workers performed which tasks during the course of the day, which equipment they used, and how long they worked.¹ Daily activity reports also reflect each worker's

¹ Almaguer sometimes acted as foreperson and filled out daily activity reports.

classification for prevailing wage purposes, and the number of hours spent on work falling within that classification.

Daily timecards are reviewed and checked against daily activity reports on a daily basis. Sometimes, the verification process reveals mathematical errors that can be easily corrected; other times, the process reveals discrepancies requiring further investigation and discussion with the foreperson and worker. The verification process culminates in the preparation of a certified payroll. The certified payroll report, which is generated every week, lists each worker's name, work classification, regular time hours, overtime hours and earnings. The certified payroll also shows prevailing wage rates for each classification required for the project. The certified payroll is required for public works projects and certifies to the contracting agency and DIR under penalty of perjury that the underlying wage and hour data is true and correct. (Labor Code, § 1776, subd. (b); Cal. Code Regs., tit. 8, § 16000.)²

D. Plaintiffs' Evidence

During the trial, plaintiffs testified that Newland failed to pay them for all of the hours they worked, failed to provide lunch and rest breaks, and made unauthorized changes to their daily timecards. As relevant here, plaintiffs also testified that Newland failed to pay them the proper prevailing wage rates.

Almaguer, relying on the company's payroll records, explained that he had compared his daily timecards and paystubs to the company's certified payroll and determined that he regularly received the prevailing wage rate for a "laborer," when he should have received the higher prevailing wage rate for an "operator." Almaguer also indicated that he sometimes received the wrong operator rate.

² Undesignated statutory references are to the Labor Code.

Almaguer offered a series of handwritten calculations purporting to quantify the alleged underpayments. In each such calculation, Almaguer subtracted the rates reflected on the certified payroll (which ranged from \$37.55 to \$46.65) from \$50.38, which Almaguer characterized as the correct prevailing wage rate. When asked how he arrived at this amount, Almaguer explained that he examined old paystubs and found he had previously received an hourly rate of \$50.38 when working as an operator on prevailing wage projects.

Amata, relying on the same payroll records, also testified that he regularly received the wrong prevailing wage rate.³ Like Almaguer, Amata testified he sometimes received the prevailing wage rate for a laborer when he should have received an operator's rate, and other times received the wrong operator's rate. Also similar to Almaguer, Amata attempted to quantify the alleged underpayments by subtracting the rates reflected on the certified payroll (which ranged from \$39.25 to \$51.65), from operators' rates (ranging from \$44.57 to \$55.40). Unlike Almaguer, Amata arrived at what he believed to be the correct rates by consulting the DIR's prevailing wage determinations.

Both plaintiffs testified their timecards were frequently altered. Almaguer testified his timecards were altered to reduce hours and to change the prevailing wage rate from operator to laborer. Amata testified his timecards were altered to reduce his hours. Both plaintiffs testified that they did not authorize the alleged changes to their timecards.

Both plaintiffs also testified they raised concerns about their paychecks to Kevin Madison, the project manager responsible for Newland's payroll (and Almaguer's longtime friend). The problems were never resolved, and plaintiffs eventually dropped

³ Amata also relied on a journal in which he recorded his hours, the projects on which he worked, and sometimes, the type of work he performed.

the matter, as their pay, though incorrect, was nevertheless better than they would have received for nonprevailing wage work, and they considered themselves lucky to have jobs in a difficult economy.

On cross-examination, Almaguer testified he was not involved in the preparation of the certified payroll, but understood that daily timecards were checked against daily activity reports as part of a process of ensuring accuracy. Almaguer acknowledged that he was challenging the accuracy of the certified payroll five or six years after the fact, based on job descriptions in his daily timecards, notes, or calendars he may have kept at home, and his recollection of specific projects. Although Almaguer maintained that he raised concerns about his paychecks to Madison, he could not recall whether he ever showed Madison any of the documents that he contends would have disclosed the purported errors. Almaguer noted that Newland failed to preserve and produce many of his timecards, adding that the company had also destroyed daily activity reports that might have supported his claims. Almaguer acknowledged that he did not understand why his paystubs reflected different rates of pay for what seemed to be the same work, in the same calendar year.

Amata, for his part, similarly maintained on cross-examination that he raised concerns about his paychecks to Madison, but acknowledged that he did not show Madison any of the documents demonstrating that the rates reflected in the paychecks were incorrect. Amata also acknowledged that he received a memorandum from Cervantes encouraging workers to notify the company of payroll errors in a timely manner. When asked whether he had notified anyone about errors in his paycheck, Amata conceded, in an apparent contradiction from his earlier testimony, that he had not.

E. Motion for Partial Nonsuit

At the close of plaintiffs' case, defendants moved for partial nonsuit on plaintiffs' causes of action for wrongful termination in violation of public policy and intentional infliction of emotional distress, their request for punitive damages, and their claim that

defendants failed to pay them the correct prevailing wage rates. The trial court took the motion with respect to the cause of action for wrongful termination in violation of public policy under submission (and eventually denied it), and granted the motion with respect to the cause of action for intentional infliction of emotional distress, request for punitive damages, and prevailing wage claim.

Defense counsel's argument with respect to the prevailing wage claim began with a discussion of the bidding process for public works projects. Defense counsel explained: "The way the process works with regard to the [P]ublic [C]ontracts [C]ode is when a public entity is going to put a project out for bid, the first thing it has to do is solicit bids. And it has to advertise that in a newspaper of general circulation for the time period stated. [¶] It is the first publication that sets the prevailing wage of the bid. And the reason the first publication date is the operative date is because when I go to do a bid, I[']ve got to know what things are going to cost me. And the first thing I need to do is I need to make a determination of what I'm going to pay Joe Employee to run the backhoe."

Defense counsel continued: "And so the way that it works under prevailing wage is that's the date, so you go to the—well, first of all, the entity is required to give you all of the crafts and trades and what the prevailing rates—to do that job, they are required. It's 1773 of the Labor Code. They are required to state each and every craft and trade they expect is going to do that job and what the wage that's going to be payable to that craft and trade. So, basically then at that point in time, you make a bid based upon what the prevailing wages are that are shown."

Defense counsel continued, "So once you make that determination, the prevailing wage law says, except for one exception, however long that contract runs, the prevailing wage that you pay is the prevailing wage that was determined on the bid date. It doesn't go up, and your prevailing wage doesn't change depending upon when the guy works. It's the date of the bid under the prevailing wage law." Defense counsel then described

the limited circumstances (discussed below), in which the prevailing wage rate might change over the life of the project. Defense counsel concluded, “Where I’m going with this, is it’s absolutely impossible five years later to go back into that and say I worked on this date and I should have been paid this rate because what they have not introduced into evidence is the date the bid was first advertised in the newspaper [which] would set the prevailing wage throughout that job.”

The trial court then asked whether defense counsel was representing that the prevailing wage rate is “peculiar” to each job, and established on the publication date. Defense counsel responded: “Right. It’s not established as of the date you work. So there is no way—there is no foundation before this jury. The other things you would have to know is what you were doing specifically on that date. And the—and it is the entity, under 1773 of the Labor Code, that establishes what craft that you’re working under and what they then determine that to the—determine that through the [DIR]. [¶] When they put it out to bid, it goes to them. They’re saying here’s all the crafts; then they approve it, then it goes out to bid, then we bid on it, whatever. Without the contract documents that show rates that the entity, the governmental entity that put it out sent and without knowing the bid date, the date of first publication in the newspaper, without all that evidence before it, that’s just speculation. They’re simply pulling dates as of the dates they worked, which as I’ve explained to the [c]ourt is not the operative date under the statute.”

Plaintiffs’ counsel objected that defense counsel’s account of the process by which prevailing wage rates are set was based on facts not in evidence. The trial court responded that defense counsel was describing the operation of the applicable law, not facts or evidence. When asked whether defense counsel’s discussion of the law was incorrect, plaintiffs’ counsel responded that defendants had the burden to show that they paid the correct prevailing wage rates, and could not meet that burden as they had destroyed the underlying contracts and invitations to bid. The trial court responded,

“How do I know—look, I have a real problem with two employees coming in here and telling me what the prevailing wage was on a job that to which they’re entitled because they could make that up. I’m not saying that they did or they didn’t, but they could have said the prevailing wage was a thousand dollars an hour.” The trial court continued, “You have to put some proof in.” In response, plaintiffs’ counsel pointed to the prevailing wage determinations attached to plaintiffs’ amended request for judicial notice. The trial court then turned to the request.

Defense counsel objected to the amended request for judicial notice, noting, again, that prevailing wage rates are set “when the first bid occurs, not the date they worked. The bid could have been a year before under an old order, and he would be paid at that rate. And you can’t—you can’t back-correlate what somebody should have been paid.” Defense counsel added that prevailing wage rates may change over the life of the project, depending on whether the applicable prevailing wage determination was a “single asterisk” determination, meaning that the listed rates apply for the duration of the project, or a “double asterisk” determination, meaning that rates must be updated from time to time to reflect predetermined rate changes. (Cal. Code Regs., tit. 8, § 16204, subd. (b).) Defense counsel concluded that defendants met their burden of proof by showing that Newland paid prevailing wage rates according to the certified payroll, and the burden was now on plaintiffs to show that the rates should have been something other than what was paid.

Following further argument, the trial court denied the amended request for judicial notice with respect to the prevailing wage determinations, stating: “Well, I don’t think that the request for judicial notice is relevant. I think that the [Evidence Code section] 352 objection that I make myself shows that prejudicial value’s outweighed by any probative value. And I’m relying a great deal on what [defense counsel] has told me.”

The trial court continued, “Now, obviously he hasn’t given me chapter and verse other than his rendition of what the law is in a generic case. If he explained it to me

wrong, he's going to be the one that bears the brunt of it." The trial court concluded, "And so I'm going to say that there is not going to be any damage claim for failure to pay what the prevailing wage was paid versus what the plaintiffs say should have been paid, which means if they didn't get paid for an hour, they get to do that. But if they got paid for an hour at the certified payroll prevailing wage rate, they can't get the extra amount that they say should have been paid because there is no proof of that for the reasons argued by [defense counsel]."

Following the trial court's ruling, plaintiffs filed a motion for reconsideration of the trial court's ruling, raising many of the arguments asserted herein. The trial court denied the motion.

Ultimately, the jury was instructed on the prevailing wage claim, in pertinent part, as follows: "In the final analysis, you may only award [p]laintiffs for any wages for work they were not paid for or any overtime work they were not paid for. You may not award [p]laintiffs any compensation for wages or overtime they were, in fact, paid for, but they claim should have been paid at a higher prevailing wage rate."

F. Defense Evidence

Cervantes, Madison, and other defense witnesses testified to the process by which the certified payroll is prepared (discussed above). All emphasized the importance of conveying accurate information to the contracting agency and DIR.

Madison testified that prevailing wage rates are tied to specific projects. Specifically, Madison explained that prevailing wage rates are established by the contracting agency's invitation to bid. According to Madison, there is no way to ascertain prevailing wage rates for a particular project without the underlying contracts and invitations to bid. On cross-examination, Madison acknowledged that the contracts and invitations to bid for the projects on which plaintiffs had worked had been destroyed in the ordinary course of business. However, Madison noted that such documents could still be obtained from the relevant contracting agencies and the DIR.

Madison and Cervantes testified that other relevant documents—namely, some of plaintiffs’ timecards and most of the daily activity reports for the relevant period—had either been lost or destroyed. Madison and Cervantes explained that Newland creates a job file when a new project is awarded, in which the company maintains copies of the invitation to bid and contract, as well as daily activity reports, and other relevant documents, such as plans or specifications. After the project is completed, the company moves the job file to one of several shipping containers in the Newland yard. When the shipping container is full, the records are burned or shredded. Madison explained that job files are kept for a year following the completion of a project, and timecards, which are stored separately, are kept for three years. Cervantes explained that one of the shipping containers was broken into, creating a mess that may have resulted in some records being misplaced.

Madison testified that he reviewed available payroll records for the relevant period and discovered that some errors had been made. Specifically, Madison found that Almaguer and Amata had each been paid for several hours at the regular rate, when they should have received the overtime rate, resulting in underpayments of \$27.08 and \$453.15, respectively.

Madison also testified that Almaguer had been a good friend. Although Madison believes he would have remembered if Almaguer had voiced any concerns about his paychecks, he could not recall ever having any such conversation. Madison did recall speaking with Almaguer after he was terminated from Newland, and encouraging him to apologize to Malone. According to Madison, Almaguer refused.

G. The Jury’s Verdict on Plaintiffs’ Legal Causes of Action

The jury deliberated for approximately four hours over the course of two days. The jury found in favor of plaintiffs on their cause of action for failure to pay ordinary wages, awarding \$3,500 to Almaguer and \$5,000 to Amata. The jury found in favor of defendants on plaintiffs’ causes of action for failure to pay overtime compensation,

failure to provide meal and rest periods, wrongful termination in violation of public policy, and waiting time penalties for nonpayment of wages. The jury was then dismissed.

H. The Trial Court's Verdict on Plaintiffs' Equitable Cause of Action

After the jury left the courtroom, defense counsel asked the trial court to make a finding on the remaining equitable issues; namely, plaintiffs' cause of action for violations of the UCL and their alter ego allegations. With respect to the cause of action for violations of the UCL, defense counsel argued, "I would ask the court, in light of the small amount of wages over an extremely lengthy period of time, that there is no shown business practice here to avoid paying wages, especially when no waiting penalties were awarded. And so I would ask the court to make a finding against the unfair business practices." Defense counsel then addressed the alter ego allegations, which are not relevant here, except as indicated below.

The trial court invited argument from plaintiffs' counsel, who submitted. The trial court then found in favor of defendants on plaintiffs' cause of action for violations of the UCL, deferring a finding on the alter ego allegations pending further briefing by the parties.⁴

⁴ The reporter's transcript for the hearing on the equitable issues reads, in pertinent part, as follows:

"THE COURT: Okay. Does anybody want to be heard on this Business and Professions Code 17200 cause of action?

"[PLAINTIFFS' COUNSEL]: We will submit it, Your Honor.

"THE COURT: Okay. I find in favor of the defendants as to the alter ego issue. What would you have me do?"

Defendants argue persuasively that the punctuation used in the reporter's transcript does not accurately convey the trial court's meaning. In defendants' view, the trial court's comments should read as follows: "Okay I find in favor of the defendants. As to the

I. Motion for Attorneys' Fees

After the trial, plaintiffs filed a motion seeking attorneys' fees in the amount of \$160,456.25 through trial, as well as an additional \$5,075 for preparation of the motion. Defendants opposed the motion, arguing that plaintiffs are only entitled to attorneys' fees for their cause of action for unpaid wages (§ 218.5), only part of which was successful, and attorneys' fees incurred in connection with the rest of plaintiffs' case should be apportioned. The trial court agreed with defendants, finding that plaintiffs' successful claims were not so intertwined with their unsuccessful ones as to make apportionment impossible or impracticable. Relying on *Mann v. Quality Old Tire Service* (2006) 139 Cal.App.4th 328, the trial court reduced the award in view of plaintiffs' limited success. The trial court reduced the award still further in view of its conclusion that plaintiffs' use of two attorneys was unnecessary. Ultimately, the trial court awarded attorneys' fees in the amount of \$35,000 through trial, plus \$2,500 for preparation of the motion.

II. DISCUSSION⁵

A. Motion in Limine

Plaintiffs argue the trial court abused its discretion in refusing to hear their motion in limine. They emphasize that the trial court directed them to file motions in limine on the first day of trial, and then refused to hear the motions on the ground that defendants were not given proper notice. Plaintiffs observe that defense counsel referred to Almaguer's conviction during opening argument and on cross-examination, and hypothesize that the jury would have had a hard time disregarding the subject, despite the trial court's curative instruction. Defendants respond that the trial court had inherent

alter ego issue, what would you have me do?" Defendants' interpretation makes sense, in the context of the transcript as a whole, and plaintiffs do not suggest otherwise. Accordingly, we accept defendants' interpretation of the transcript.

⁵ The panel as presently constituted was assigned this matter in September 2018.

authority to control the order of proceedings and, in any event, plaintiffs could not have been prejudiced by two fleeting references to Almaguer's conviction over the course of an eight day trial, particularly when there was other evidence suggesting that Almaguer harbored a disrespectful attitude towards Malone that may have led him to act inappropriately towards her on the day of his termination.

Whether the trial court has a particular inherent authority is a question of law subject to de novo review, and the court's exercise of its inherent authority is reviewed for abuse of discretion. (*People v. Lujan* (2012) 211 Cal.App.4th 1499, 1507.) We agree with defendants that the trial court had inherent authority to control the proceedings before it. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 267 [trial court has inherent authority to control the proceedings before it, including its calendar and docket].) But we are also inclined to agree with plaintiffs that the trial court abused its discretion in the exercise of its inherent authority by directing the parties to file motions in limine on the first day of trial, only to refuse to hear the same motions on the ground that they should have been filed earlier.⁶ We need not resolve this issue, however, as we conclude there was no prejudice.⁷

As noted, there were only two brief references to Almaguer's conviction over the course of the trial, which the jury was clearly instructed to disregard. Although plaintiffs

⁶ Even the trial court appears to have recognized the problematic nature of its approach. During one of several discussions of motions in limine, the trial court told plaintiffs' counsel, "Let's just drop this because you were certainly misled, if you want to put it in those terms. But you thought it was okay to file the motions in limine simply because my minute order said it was okay. So I'm not—that's my fault."

We encourage the trial court to revise its case management order regarding pretrial proceedings to clarify the court's preferences on the time for filing motions in limine.

⁷ Plaintiffs imply that the asserted error prejudiced both of them, but make no attempt to explain how Amata could have been prejudiced. We deem any claim of error as to Amata to have been waived.

speculate that jurors may have had difficulty putting the conviction out of their minds, “ ‘[w]e presume that jurors understand and follow the court’s instructions.’ ” (*People v. Sandoval* (2015) 62 Cal.4th 394, 422; see also *People v. Navarrete* (2010) 181 Cal.App.4th 828, 834 [“Ordinarily, a curative instruction to disregard improper testimony is sufficient to protect a defendant from the injury of such testimony, and, ordinarily, we presume a jury is capable of following such an instruction”].) In any case, the verdict indicates that plaintiffs received comparable treatment by the jury, despite the fact that the asserted error could have affected only Almaguer.⁸ On the record before us, we conclude that the trial court’s curative instruction was sufficient to protect Almaguer from any injury flowing from defense counsel’s statements. We therefore reject the claim of error.

B. Prevailing Wage Claim

Next, plaintiffs argue the trial court erred in granting defendants’ motion for partial nonsuit of their prevailing wage claim. According to plaintiffs, the trial court’s ruling was erroneous because (1) the court improperly relied on defense counsel’s account of the process by which prevailing wage rates are determined, rather than the law, and (2) the court improperly shifted the burden of proof to plaintiffs to show what the correct prevailing wage rates should have been. We will address these contentions momentarily, once we have considered the standard of review and applicable law.

1. Standard of Review

“A motion for nonsuit allows a defendant to test the sufficiency of the plaintiff’s evidence before presenting his or her case. Because a successful nonsuit motion precludes submission of plaintiff’s case to the jury, courts grant motions for nonsuit only

⁸ Although the jury’s award to Amata (\$5000) was greater than the award to Almaguer (\$3500), Amata’s tenure with Newland was approximately one year longer than Almaguer’s.

under very limited circumstances.” (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 838.) A defendant is only entitled to nonsuit if the trial court determines the evidence presented by plaintiff is insufficient to permit a jury to find in his or her favor as a matter of law. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291.) “In determining whether plaintiff’s evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded.” (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 118.) “The rules governing the granting of a nonsuit, however, do not relieve the plaintiff of the burden of establishing the elements of his case. The plaintiff must therefore produce evidence which supports a logical inference in his favor and which does more than merely permit speculation or conjecture.” (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402.) On appeal, “[w]e independently review the ruling on a motion for nonsuit, guided by the same rules that govern the trial court. [Citations.]” (*Pinero v. Specialty Restaurants Corp.* (2005) 130 Cal.App.4th 635, 639.)

2. *Prevailing Wage Law*

“The California Prevailing Wage Law is a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds. [Citations.] [¶] Under the prevailing wage law, all workers employed on public works costing more than \$1,000 must be paid not less than the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations for work of a similar character and not less than the general prevailing per diem wage for holiday and overtime work.” (*Road Sprinkler Fitters Local Union No. 669 v. G&G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 776; see § 1771.) “The central purpose of the prevailing wage law is to protect and benefit employees on public works projects.” (*Road Sprinkler Fitters Local Union No.*

669 v. *G&G Fire Sprinklers, Inc.*, *supra*, at p. 776; see *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 985.)

“The Director of the Department of Industrial Relations (Director) is given the responsibility for determining the general prevailing wage according to statutory criteria. (§ 1770.) The Director fixes the prevailing wage rates for every category of worker needed for a public works project, which are then used by public entities soliciting bids for the project. (§§ 1773, 1773.2.)” (*State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 295.) The Director’s determination of the prevailing wage is to be based on consideration of wage rates set by collective bargaining agreements and for federal public works in the same area, unless those rates do not “constitute the rates actually prevailing in the locality,” in which case the Director is to “obtain and consider” other data from labor organizations, employers, and employer associations. (§ 1773.)

“Section 1773 requires the public entity ‘awarding any contract for public work, or otherwise undertaking any public work,’ to obtain from the Director the general prevailing rate for each craft, classification or type of worker needed to execute the contract. The public entity must specify those rates in its call for bids, in bid specifications, and in the contract or, alternatively, must specify in those documents that the prevailing wage rates are on file in its principal office. (§ 1773.2.)” (*Lusardi Construction Co. v. Aubry*, *supra*, 1 Cal.4th at p. 986.) “Contractors must use the prevailing wage determinations in effect on the bid advertisement date of the public works project.” (*Vector Resources, Inc. v. Baker* (2015) 237 Cal.App.4th 46, 51.) The “bid advertisement date” is “[t]he date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding.” (Cal. Code Regs., tit. 8, § 16000.)

Each prevailing wage determination includes a specified expiration date. (See State of California Department of Industrial Relations, Division of Labor Standards Enforcement, Public Works Manual (May 2018), at § 3.2.5 (Public Works Manual).) The expiration date is defined as the date on which the determination is “subject to change.” (*Ibid.*; see also Cal. Code Regs., tit. 8, § 16000.) If the prevailing wage determination in effect on the bid advertisement date for a project has a double asterisk (**) after the expiration date, prevailing wage rates must be updated on the date following the expiration date to reflect “predetermined” rate changes (generally, increases to the wage rate). (Public Works Manual, *supra*, § 3.2.5.) If the prevailing wage determination in effect on the bid advertisement date has a single asterisk (*) after the expiration date, the rates set forth in the prevailing wage determination will apply “for the entire duration of the project, no matter how long work under the original public works contract continues.” (*Ibid.*)

3. *The Trial Court Properly Applied the Prevailing Wage Law*

Plaintiffs argue the trial court erred in relying on defense counsel’s account of the process by which prevailing wage rates are determined. According to plaintiffs, defense counsel’s comments “could not even be considered in ruling on the nonsuit,” presumably because, as they argued in the trial court, they were factual rather than legal. We disagree. As the trial court correctly concluded, defense counsel was making a legal argument, not a factual one. Significantly, plaintiffs do not suggest that defense counsel’s legal argument was incorrect, and the foregoing discussion indicates that it was not.

Plaintiffs additionally argue the trial court based its ruling “upon its own subjective belief,” rather than the law. As support for their contention, plaintiffs point to the trial court’s statement that, “I have a real problem with two employees coming in here and telling me what the prevailing wage was on a job that to which they’re entitled because they could make that up.” Contrary to plaintiffs’ contention, the trial court’s

remarks cannot reasonably be understood to mean that the court based its ruling on its “subjective beliefs” about the prevailing wage law. The trial court’s comments are more reasonably understood to mean that the court was concerned about plaintiffs’ presentation of the evidence, which presumed, incorrectly, that prevailing wage rates can be determined without reference to the underlying contracts and invitations to bid. As we have suggested, plaintiffs’ presumption was incorrect.

4. *The Trial Court Did Not Misallocate the Burden of Proof*

Next, plaintiffs argue the trial court misallocated the burden of proof in ruling on the motion for partial nonsuit. Specifically, plaintiffs argue they met their initial burden of proof by (1) testifying that they performed prevailing wage work that entitled them to be paid at higher rates than those reflected in the certified payroll, and (2) adducing evidence that documents that would have established the correct prevailing wage rates—contracts and invitations to bid—had been lost or destroyed. Relying on *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721 (*Hernandez*), plaintiffs argue the burden then shifted to defendants to show that the prevailing wage rates reflected on the certified payroll were correct. According to plaintiffs, defendants failed to carry their burden, and therefore, should not have prevailed on the motion. We disagree.

We begin our analysis with *Hernandez*, which undergirds much of plaintiffs’ argument. In *Hernandez*, the plaintiff, a butcher, brought an action to recover wages for uncompensated overtime from his former employer, a grocery store. (*Hernandez, supra*, 199 Cal.App.3d at pp. 723-724.) The butcher attempted to prove the actual hours he had worked by presenting a calendar he had prepared from memory almost a year after the termination of his employment. (*Id.* at p. 724.) The grocery store, while criticizing the calendar, conceded that it had not kept accurate records of the butcher’s hours. (*Id.* at pp. 724-725.) The trial court entered judgment for the grocery store, finding that the calendar was not adequate evidence, and concluding that the butcher had not carried his burden of proof. (*Id.* at p. 725.)

The appellate court reversed, holding that the grocery store's failure to keep adequate time records was a violation of wage and hour regulations, and thus shifted the burden of proof to the grocery store to demonstrate that the butcher did not work the hours he claimed. (*Hernandez, supra*, 199 Cal.App.3d at pp. 726-727.) The court explained: “ ‘[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a . . . difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on the employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation In such a situation we hold that an employee has carried his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.’ ” (*Id.* at p. 727, quoting *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 687-688.)

Hernandez does not help plaintiffs. There, it was undisputed that the butcher “worked more than [eight] hours per day and more than 40 hours per week,” and the record showed “without question that [the butcher] incurred damages of uncompensated overtime during the disputed period.” (*Hernandez, supra*, 199 Cal.App.3d at p. 726.) The question before the trial court was not whether the butcher suffered damages, but what the extent of those damages was. (*Ibid.*) The task of answering that question was complicated by the fact that the grocery store failed to maintain accurate records, in violation of wage and hour regulations. (*Id.* at p. 727.) It was against this background

that the *Hernandez* court concluded that it was appropriate to shift the burden of proof to the grocery store to come forward with evidence of the amount of work performed or negate the butcher's evidence. (*Ibid.*)

Here, by contrast, there was an active dispute as to whether plaintiffs were improperly compensated. Far from conceding that plaintiffs received the wrong prevailing wage rates, defendants argued that the certified payroll, which was generated using prevailing wage rates provided by the DIR, constituted prima facie evidence that the rates paid were correct. Under the circumstances, and considering the parties' dispute, plaintiffs retained the initial burden of proof to show that they were improperly compensated. (*Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1328 ["As a general rule, employees have the burden of proving that they performed work for which they were not compensated"].) Because their prevailing wage claim proceeded from the premise that they received the wrong prevailing wage rates, plaintiffs had the burden of showing what the correct rates would have been. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"].) Plaintiffs attempted to meet that burden with their request for judicial notice of the DIR's prevailing wage determinations, which we discuss at greater length below. For present purposes, suffice to say that the prevailing wage determinations were not substantial evidence of the prevailing wage rates on the dates on which plaintiffs claim to have been underpaid. As we have suggested, the correct prevailing wage rates could only be determined by reference to the underlying contracts and invitations to bid, which, though no longer in Newland's possession, could still be obtained from the DIR. It was plaintiffs' burden, as parties seeking an award of damages, to obtain those documents, from whatever source, and offer evidence that the correct prevailing wage rates was something other than what they received. Having failed to do so, the trial court properly

concluded that the evidence was insufficient as a matter of law to permit the jury to find in plaintiffs' favor. (*Nally v. Grace Community Church*, *supra*, 47 Cal.3d at p. 291.)

Plaintiffs make much of the fact that defendants appear to have lost or destroyed pertinent documents, including the contracts and invitations to bid that would have established the applicable prevailing wage rates. However, plaintiffs do not contend that defendants engaged in the spoliation of evidence or violated any recordkeeping requirements. (Cf. *Hernandez*, *supra*, 199 Cal.App.3d at p. 727 [grocery store failed to keep accurate time records, in violation of Cal. Code Regs., tit. 8, § 11070, subd. 7(A)(3)].) Nor do they suggest that the relevant contracts and invitations to bid were not available from the DIR. Instead, plaintiffs suggest that defendants, having destroyed documents in the ordinary course of business, automatically assumed a burden of proof as to the contents of those documents. Nothing in *Hernandez* or any of plaintiffs' other authorities supports their theory. To the contrary, *Hernandez* makes clear that plaintiffs had the initial burden of proving they were improperly compensated. (*Hernandez*, *supra*, at p. 727.) That defendants destroyed documents that may have helped plaintiffs carry their initial burden does not, in the circumstances of this case, shift the burden to defendants or otherwise relieve them from their burden of proof. Because evidence of the correct prevailing wage rates was an essential element of their prevailing wage claims, and because plaintiffs failed to present substantial evidence of the correct prevailing wage rates for the work they performed, we conclude the trial court properly granted the motion for nonsuit.

5. *The Trial Court Did Not Abuse its Discretion in Denying the Amended Request for Judicial Notice*

Plaintiffs contend the trial court erred in denying their amended request for judicial notice of the DIR's prevailing wage determinations. According to plaintiffs, the trial court had a mandatory obligation to take judicial notice of 132 pages of prevailing

wage determinations, covering five classifications over a period of four years. Again, we disagree.

A trial court's determination of the propriety of taking judicial notice implicates Evidence Code section 352 considerations. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578; Evid. Code, § 454, subd. (a)(2).) Evidence Code section 352 "allows trial courts to exclude otherwise admissible evidence whose 'probative value is substantially outweighed' by its potential for unfair prejudice, confusion, or undue consumption of time." (*People v. Wheeler* (1992) 4 Cal.4th 284, 291.) "[I]t is the exclusive province of the trial court to determine whether the probative value of evidence outweighs its possible prejudicial effect." (*People v. Sassounian* (1986) 182 Cal.App.3d 361, 402.) The trial court's exercise of discretion will not be disturbed on appeal absent a clear showing of abuse. (*Ibid.*)

No such showing has been made here. To the contrary, our independent analysis of the process by which prevailing wage rates are set convinces us that the prevailing wage determinations, by themselves, would not assist the trier of fact in determining the operative prevailing wage rates for the dates at issue. Rather, as we have suggested, prevailing wage rates are determined on a project-by-project basis, by reference to the underlying contracts and invitations to bid. (*Lusardi Construction Co. v. Aubry, supra*, 1 Cal.4th at p. 986.) Without those documents, which plaintiffs failed to introduce, the prevailing wage determinations would have had little, if any, probative value, and would have been likely to confuse the issues and mislead the jury. The trial court did not abuse its discretion in determining that the probative value of the prevailing wage determinations, standing alone, would have been substantially outweighed by their prejudicial effect.⁹

⁹ Plaintiffs argue the prevailing wage determinations were relevant because Madison acknowledged on cross-examination that he reviewed similar documents in evaluating

C. *UCL Claim*

Next, plaintiffs argue the trial court erred by granting defendants' motion for a directed verdict on the UCL claim. As defendants observe, plaintiffs mischaracterize the record. Contrary to plaintiffs' suggestion, the trial court did not direct the jury to find for defendants on the UCL claim. (Cf. *Southern Cal. Tel. Co. v. Carpenter* (1946) 75 Cal.App.2d 336, 343 [the trial court may direct a verdict against a party when there is no evidence of sufficient substantiality to support a verdict in favor of such party, if such a verdict were rendered].) Rather, the trial court entered a verdict on disputed evidence on the UCL claim—an equitable cause of action that was tried concurrently with plaintiffs' legal causes of action. On the record before us, the trial court clearly entered a verdict, not a directed verdict.¹⁰

Not surprisingly, considering their mischaracterization of the record, plaintiffs also misstate the applicable standard of review. Plaintiffs argue for a de novo standard of review, arguing that the verdict must be reversed unless “no other reasonable conclusion is legally deducible from the evidence, and that any other holding would be so lacking in evidentiary support that a reviewing court would be impelled to reverse it upon appeal, or the trial court to set it aside as a matter of law.” (*Estate of Lances* (1932) 216 Cal. 397, 400-401.) Defendants counter that the verdict must be reviewed for substantial evidence.

their claims. However, Madison clarified on redirect that he did not rely on the prevailing wage determinations in calculating plaintiffs' damages. Rather, Madison testified that he relied on the prevailing wage rates in the certified payroll. As noted, Madison further testified that it would be “impossible” to reverse engineer the applicable prevailing wage rates from the prevailing wage determinations alone.

¹⁰ In their reply brief, plaintiffs argue for the first time that the trial court granted a motion for nonsuit on the UCL claim. Not so. A successful motion for nonsuit effectively takes an issue away from the jury. (*Nally v. Grace Community Church, supra*, 47 Cal.3d at p. 291.) The UCL claim was not taken away from the jury. The UCL claim was an equitable cause of action that was tried by the trial court. It was never before the jury, and could not have been subject to a motion for nonsuit.

We agree with defendants. (*Alderson v. Alderson* (1986) 180 Cal.App.3d 450, 465.) “ ‘When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.’ ” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) “If this ‘substantial’ evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld. As a general rule, therefore, we will look only at the evidence and reasonable inferences supporting the successful party, and disregard the contrary showing.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

Relying on *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, plaintiffs argue the failure to pay ordinary wages is a proscribed practice under the UCL, and therefore, given the jury’s finding on their unpaid wages claim, the trial court was obliged to find in their favor on the UCL claim. We are not persuaded. On the record before us, which does not include a statement of decision, the trial court could have found that Newland violated the UCL, but could have also found the jury’s award of unpaid wages constituted adequate restitution under the UCL, and no further restitutionary or injunctive relief was warranted. Put another way, the trial court could have found for plaintiffs on the question of liability, but nevertheless exercised its broad discretion to rule in defendants’ favor on the question of remedies. (*Id.* at p. 371 [“The court’s discretion is very broad. [Business and Professions Code] [s]ection 17203 does not mandate restitutionary or injunctive relief when an unfair business practice has been shown. Rather, it provides that the court ‘*may* make such orders or judgments . . . as may be necessary to prevent the use or employment . . . of any practice which constitutes unfair competition . . . or as may be necessary to restore . . . money or property’ ”].) In the absence of a statement of decision, which plaintiffs do not appear to have requested, we presume the trial court made all necessary factual findings, and properly considered

the equities in fashioning a remedy. (*In re Marriage of McLain* (2017) 7 Cal.App.5th 262, 270, fn. 2 [“Generally, the absence of a statement of decision means that we must conclude the lower court made all findings necessary to support its order under any theory argued”].) Here, those findings include an implied finding that the jury’s award of unpaid wages constituted restitution for plaintiffs’ monetary losses, and no other UCL remedies were necessary in view of the relatively small scale of the violations, and the testimony, from Cervantes, Madison, and others, that the company’s policy was to ensure that the certified payroll was as accurate as possible. Substantial evidence supports the trial court’s implied findings, and plaintiffs, having misapprehended the applicable standard of review, do not contend otherwise. We therefore reject plaintiffs’ claim of error.

D. Attorneys’ Fees

Finally, plaintiffs argue the trial court abused its discretion in awarding attorneys’ fees. Specifically, plaintiffs argue the trial court abused its discretion in apportioning fees between successful and unsuccessful claims, in reducing fees on the ground that plaintiffs achieved only “limited success,” and in reducing fees on the ground that plaintiffs unnecessarily relied on two attorneys, when one would have sufficed. We perceive no abuse of discretion.

California courts have long held, in a variety of contexts, that determining a “reasonable” fee properly takes into account the extent of a party’s success. (See *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989 (*Chavez*) [“If a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims unrelated to the successful claims, and the trial court ‘should award only that amount of fees that is reasonable in relation to the results obtained’ ”], quoting *Hensley v. Eckerhart* (1983) 461 U.S. 424, 440; *Boquilon v. Beckwith* (1996) 49 Cal.App.4th 1697, 1772 [“reasonable” fees under Civ. Code, § 1695.7 properly took into account the extent of success]; *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 250 [“reasonable”

(See *Aleman v. Airtouch Cellular* (2012) 209 Cal.App.4th 556, 583-584.) “When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action.” (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1128, 1133.) However, “the joinder of causes of action should not dilute the right to attorney fees. Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not. All expenses incurred on the common issues qualify for an award.” (*Ibid.*)

Even when initial apportionment in determining the lodestar is not possible (i.e., when claims are interrelated), under *Harman*’s second step, the trial court must “still evaluate the ‘significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation’ ” and determine if a reduction in lodestar fees is appropriate. (*Harman, supra*, 158 Cal.App.4th at pp. 417, 418.) “ ‘In conducting this analysis, a court “may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.” [Citation.]’ [Citation.]” (*Id.* at p. 418.) Our Supreme Court has emphasized that, “the extent of a plaintiff’s success is a crucial factor.” (*Chavez, supra*, 47 Cal.4th at p. 989; *id.* at p. 990 [noting “[o]n this point, California law is consistent with federal law”]; see also *Farrar v. Hobby* (1992) 506 U.S. 103, 114 [“ ‘the most critical factor’ in determining the reasonableness of a fee award ‘is the degree of success obtained’ ”].) The focus in this regard is a comparison of the litigant’s stated goals with the ultimate recovery, and not proportionality between the result and the fee award. (*Chavez, supra*, at p. 989 [“attorney fees need not be strictly proportionate to the damages recovered” but “ ‘[w]hen a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief [citation], the only reasonable fee is usually no fee at all’ ”]; *Harman, supra*, at p. 420.)

Here, the trial court began by apportioning fees between plaintiffs' successful claim for nonpayment of wages and their unsuccessful claims for failure to provide rest and meal periods, failure to pay prevailing wages, violations of the UCL, wrongful termination in violation of public policy, and intentional infliction of emotional distress. Plaintiffs argue the trial court abused its discretion in making the initial apportionment because their successful and unsuccessful claims arose from a common core of operative facts. However, the trial court specifically found that "the claim for unpaid wages is not so intertwined with the other claims to make it impossible or impractical to make an allocation between the work done on the successful claim and the others." The trial court, having heard the entire case, was in the best position to determine whether the issues were so intertwined that apportionment would be impossible or impractical. (See *Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 556.) Plaintiffs do not address the trial court's methodology for apportioning fees between successful and unsuccessful claims (which defendants proposed in opposing the motion and the trial court adopted as reasonable and persuasive), and do not explain why that methodology should not have been applied in the circumstances of this case. In the absence of any reasoned critique of the trial court's methodology, plaintiffs fail to demonstrate that the court abused its discretion in apportioning fees.

Plaintiffs also argue that the trial court erred in reducing fees to reflect their limited success. However, the trial court could reasonably conclude that plaintiffs achieved a pyrrhic victory, given that they incurred more than \$160,000 in attorneys' fees in pursuit of an \$8,500 verdict. Contrary to plaintiffs' contention, such a result cannot reasonably be viewed as a "complete success." The trial court did not abuse its discretion in reducing fees to reflect plaintiffs' limited success.

Finally, plaintiffs argue the trial court erred in adjusting the lodestar to account for the duplication of effort involved in having two attorneys prosecute the case, when one would have sufficed. The trial court found that "the use of two attorneys at trial was

unreasonable,” and plaintiffs’ lead trial counsel, “could have handled the entire trial by himself, just as defense counsel did.” “The ‘ ‘experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ’ ’ ” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) Plaintiffs have not convinced us that the trial court was clearly wrong in concluding that their use of two attorneys was unreasonable. We therefore reject the claim of error.

III. DISPOSITION

The judgment and the order granting plaintiffs’ motion for attorneys’ fees are affirmed. Defendants are to recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

RAYE, P. J.

/S/

MAURO, J.